

**BOISE, IDAHO, FRIDAY, JANUARY 13, 2023 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**RUSSELL POTTENGER,**

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**Petitioner-Respondent,**

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**v.**

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**Docket No. 50107**

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**AUDREY CHARLTON,**

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**Respondent-Appellant.**

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Appeal from the District Court of the Second Judicial District of the State of Idaho, Idaho County. Jeff P. Payne, Magistrate Judge.

Gravis Law, PLLC, Boise, for Appellant.

Davis & Hoskisson, PLLC, Boise, for Respondent.

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This case arises from a child custody action. Russell Pottenger and Audrey Charlton are the parents of two minor children. While the couple was together, the family lived in Riggins. After the couple split, Charlton moved to Boise. Pottenger subsequently filed a petition for paternity, custody, and child support seeking primary custody. The magistrate court ordered the parties to share joint legal and physical custody of the children, in which Pottenger had custody of the children from Monday at noon to Thursday drop off to preschool and Charlton had custody of the children every Thursday after preschool to Monday at noon. The magistrate court also ordered Pottenger to install code compliant windows in every room of his residence, except the utility room, within six months of the date of entry of the judgment.

Over a year after the magistrate court filed the original judgment, Charlton filed a motion to modify custody requesting primary physical custody because there were substantial and material changes in circumstances because Pottenger failed to comply with the window installation provision of the original custody judgment. Pottenger's answer to the motion also requested primary physical custody arguing the original custody judgment: (1) provided excessive weekly travel time between Riggins and Boise, (2) interfered with the children's ability to participate in extracurricular activities, and (3) prevented the children to spend any weekends with their father.

The magistrate court granted Pottenger's request and gave Pottenger primary physical custody of the children after determining that the original custody arrangement was not in the best interests of the children because it required the children to travel six hours each week during the school year. Additionally, the magistrate court found that it was not in the best interests of the children because it never provided for the children to spend any weekends with Pottenger, and only provided for the children to be with Pottenger for the first and last week of summer. The magistrate court ordered Charlton to have custody of the children on alternating weekends during

the school year. Additionally, the magistrate court ordered each party to have custody of the children for one-half of the children's summer vacation. The magistrate court's modification order did not address the window installation provision from the original custody judgment. Charlton appeals the magistrate court's modification order, arguing the magistrate court abused its discretion in denying her request for primary custody by ignoring the fact that Pottenger failed to comply with the window installation provision in the original custody judgment.